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CITY OF VANCOUVER

210 East 13th Street - Post Office Box 1995 - Vancouver, Washington 98668-1995



October 30, 1997

Mr. William Kennard
Chairman Designate
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

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Ex Parte Letter Re: Cases WT 97-197, MM Docket 97-182, and DA 96-2140

Dear Mr. Kennard:

Please terminate all action in the above-listed cases. As explained in the attached letter from Vancouver Mayor Royce E. Pollard to the City of Vancouver's Congressional delegation, these cases attempt to preempt traditional local zoning and land use authority, contrary to the intent of Congress, the Communications Act, and sound public policy.

Very truly yours,

Ted H. Gathe
City Attorney
City of Vancouver

Enclosure

cc Mr. William F. Caton, Acting Secretary
Commissioner Designate Harold Furchtgott-Roth
Commissioner Designate Michael Powell
Commissioner Designate Gloria Tristani
Commissioner Susan Ness
Shaun A. Maher, Esq.
Mr. Keith Larson, Assistant Bureau Chief for Engineering
Ms. Susanna Swerling
Ms. Rosalind Allen, Deputy Chief
Mr. Dan Phythyon, Acting Chief
Mr. Roy Stewart, Chief
Ms. Barrie Tabin
Ms. Eileen Huggard, Executive Director, NATOA
Mr. Robert Fogel, Associate Legislative Director
Mr. Kevin McCarty, Assistant Executive Director
Ms. Cheryl Maynard, Government Affairs Coordinator

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CITY OF VANCOUVER

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October 29, 1997

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Senator Slade Gorton
730 Hart Senate Office Building
Washington, D.C. 20510

Senator Patty Murray
111 Russell Senate Office Building
Washington, D.C. 20510

Representative Linda Smith
1317 Longworth House Office Building
Washington, D.C. 20515

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FCC MAIL ROOM

RE: Preservation of Local Land Use Authority - FCC Proposed Rulemakings
for Cellular and Broadcast Towers

Dear Senator Murray, Senator Gorton, and Representative Smith:

I am writing in behalf of the City of Vancouver to ask your assistance in preserving local control over land use and zoning decisions regarding cellular and broadcast towers.

Specifically, we ask you to do three things:

- 1.) Write to the new FCC Chairman William Kinnard and FCC Commissioners Susan Ness, Harold Furchgott-Roth, Michael Powell and Gloria Tristani urging them to stop FCC efforts to intrude into local zoning authority in cases WT 92-197, MM Docket 97-182 and DA 95-2140.
- 2.) Join in the "Dear Colleague Letter" being prepared to go to the FCC from many members of Congress.
- 3.) Oppose any efforts in Congress to grant to the FCC authority to preempt local zoning authority.

By way of background, both Congress and the courts have recognized that zoning and land use are areas of particular local concern. Congress expressly preserved local authority over placement, construction and modification of cellular facilities in Section 704 of the Telecommunications Act of 1996.

However, the FCC is attempting in three proposed rulemakings in particular to effectively preempt all or most local land use control over these facilities. We will comment on each of these in turn.

Cellular Tower Moratoria (And Vancouver's Experience)

The FCC has proposed a rulemaking to declare all local zoning moratoria illegal. The FCC indicated in July of 1997 that it had tentatively concluded that it should preempt all cellular tower moratoria of unlimited duration and asked for additional comments. The City of Vancouver, along with a number of other communities across the United States, has provided comments to the FCC opposing federal preemption of local zoning moratoria.

Vancouver's experience with a moratorium on issuance of permits for cellular facilities has been positive and illustrates how such a moratorium can be an appropriate local zoning tool.

In response to an unprecedented number of new cellular site applications after enactment of the Telecommunications Act of 1996, and in accordance with Washington law, the City Council in August, 1996, declared a six month moratorium on issuance of permits in order to craft development standards to mitigate the impacts of these facilities on the community.

During the moratorium, city staff met with wireless providers and community representatives to study the needs of the industry and the community and to develop standards for siting and design of wireless facilities. The moratorium was extended briefly for another three months in March, 1997, to allow for this work to be completed and for full public input to be provided. The City's new wireless ordinance was adopted after public hearing in June, 1997.

The results have been positive for the industry and the community. The moratorium allowed all concerned to develop a thoughtful and balanced approach to a new technology and land use controls. All or most of the new proposed cell sites are in commercial and industrial zones rather than in residential. The industry has shown its ability and willingness to design sites so as to minimize impacts on surrounding properties. In one case, the new cellular "antennas" are to be mounted on the roof of an existing building and are designed to look like decorative cornices. Industry and community representatives are continuing to meet to find ways to fine-tune the existing ordinance and application processes to benefit the interests of both.

Given the rapid changes taking place in both technology and the law, similar moratoria can be useful planning tools in the future and should not be preempted at the federal level on a "one size fits all" basis by the FCC.

Cellular Towers and Radiation Concerns

The 1996 Act provided that local municipalities may not regulate the radiation from cellular antennas if they are within limits set by the FCC. Vancouver's new wireless ordinance incorporates the FCC standards by reference. Although a number of citizens testified at the hearings on the new ordinance regarding the RF risks from cellular antennas, Council and its legal counsel made clear that the City was not in a position to set standards which exceeded the FCC's.

However, the FCC has now proposed rules which would permit it to review and reverse local zoning decisions which it concludes are "tainted" by citizen concerns over RF radiation, regardless of the basis for the decision stated by the local decision-makers in their written decisions.

As you are no doubt aware from attending countless public hearings and reading mail from your constituents, it is impossible to prevent citizens from expressing their honest views on everything from RF radiation to potholes. Reversing local decisions on account of testimony from citizens is neither realistic nor good public policy in a free society.

Radio and Television Towers - Automatic Grants and Unreasonable Timelines

The FCC has also issued a proposed rulemaking preempting local zoning of radio and television broadcast towers and requiring municipalities to act on broadcast tower applications within 21-45 days. If the applications are not acted on within this very short time period, the applications would be deemed granted. This proposed rulemaking would also limit zoning decisions to safety concerns, with no consideration allowed of other legitimate local concerns such as property values, aesthetics, impacts on historic sites, or environmental effects. The FCC would act as the appeal board, not state courts.

In contrast, Vancouver's procedural ordinance for processing land use applications (based on Washington's recently adopted regulatory reform law) sets forth an orderly process for assessing whether applications are complete, whether proposals comply with applicable standards, and for notice and input from affected parties, all within a 120 day timeline for approving or disapproving applications. There is also an orderly appeal process, with review by state courts.

Although the FCC's rulemaking indicates that it was prompted by concerns that local regulations may hinder rapid deployment of the new High Definition Television (HDTV), the proposed rule is not limited to those facilities and is not limited in duration. As proposed, it would apply to even AM radio stations and continue in effect indefinitely. Reports in The Wall Street Journal and other trade magazines indicate broadcasters cannot meet the current FCC schedule for HDTV deployment on account of factors that have nothing to do with local zoning.

In short, the proposed FCC preemption would needlessly interfere with established local land use processes and standards, without any demonstration that such FCC preemption would make HDTV available to the American public any sooner.


Conclusion

If you have any questions about these FCC rulemakings and their impacts on Washington communities, I encourage you to call the following contact people directly at the following organizations:

- Barrie Tabin at National League of Cities - Phone: 202-626-3194
- Eileen Huggard at National Association of Telecommunications Officers and Advisors - Phone: 703-506-3275
- Robert Fogel at the National Association of Counties - Phone: 202-393-6226
- Kevin McCarty at the U.S. Conference of Mayors - Phone: 202-293-7330
- Cheryl Maynard at American Planning Association - Phone: 202-872-0611

Please feel free to contact Mark Brown, Vancouver Governmental Relations Director, or me, if you have any questions about Vancouver's experience or concerns.

Very truly yours,


Mayor Royce Pollard
City of Vancouver

cc Senator John McCain
 Senator Conrad Burns
 Senator Kay Bailey Hutchinson
 Senator Dianne Feinstein
 Representative Tom Bliley
 Representative W.J. Tauzin
 Representative Edward J. Markey
 Representative John D. Dingell
 Representative Bob Goodlatte
 Representative James Moran
 Representative Bart Stupak
 Representative Joe Barton
 Ms. Barrie Tabin
 Ms. Eileen Huggard
 Mr. Robert Fogel
 Mr. Kevin McCarty
 Ms. Cheryl Maynard
 FCC